

Hon. Robert J. Bryan

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA**

DIANA AND JOSEPH BONGIOVANNI,) Case No. 3:13-cv-05908-RJB
)
Plaintiffs,) **EX PARTE MOTION FOR LEAVE TO**
) **FILE SECOND AMENDED COMPLAINT**
)
vs.)
) NOTE ON MOTION CALENDAR:
) March 14, 2014
THE SCHREIBER LAW FIRM, PLLC,)
and DYNIA & ASSOCIATES, LLC,)
)
Defendants.)

Plaintiffs Diana and Joseph Bongiovanni ("Plaintiffs") respectfully move this Court for leave to file a second amended complaint in this matter. This motion is noted as an ex parte motion because no other party has yet appeared in this matter. In support, Plaintiffs state as follows:

1. On October 15, 2013, Plaintiffs filed their original complaint in this matter against "The Schreiber Law Firm, LLC" alleging violations of the federal Fair Debt Collection Practices Act, 15 U.S.C. § 1692, *et seq.* ("FDCPA"). (Doc. 1).

2. On December 31, 2013, Plaintiffs filed an amended complaint as a matter of course under Rule 15(a)(1), in order to correct the name of the defendant to "The Schreiber Law Firm, PLLC." (Doc. 6).

1 3. Thereafter, Plaintiffs provided their counsel with additional information related to
2 this matter. Specifically, regarding the involvement of Dynia & Associates, LLC, and its
3 attempts to collect the same debt forming the basis of this controversy.
4

5 4. On January 28, 2014, Plaintiffs filed a second amended complaint in order to add
6 Dynia & Associates, LLC as a Defendant in this matter, believing they could do so without court
7 order under Rule 15(a).

8 5. Thereafter, this Court informed Plaintiffs that leave was needed before additional
9 summonses would be issued.
10

11 6. The allegations included in Plaintiffs' proposed second amended complaint serve
12 to ensure that Plaintiffs' rights are fully adjudicated on the merits.

13 7. The Supreme Court has recognized that the spirit of the Federal Rules of Civil
14 Procedure is to have controversies decided on their merits. *Foman v. Davis*, 371 U.S. 178, 182
15 (1962). To this end, Rule 15 provides that a trial court shall grant leave to amend a pleading
16 freely when justice so requires. Fed. R. Civ. P. 15(a)(2); *Lopez v. Smith*, 203 F.3d 1122, 1130
17 (9th Cir. 2000) (en banc).

18 8. "The Supreme Court has stated that 'this mandate is to be heeded,' " *Lopez*, 203
19 F.3d at 1130 (quoting *Foman*, 371 U.S. at 182), and the Ninth Circuit has explained that "[t]his
20 policy is to be applied with extreme liberality." *Eminence Capital, LLC v. Aspeon, Inc.*, 316
21 F.3d 1048, 1051 (9th Cir. 2003).
22

23 9. Plaintiffs' motion for leave to file a second amended complaint is not brought in
24 bad faith, for the purposes of harassment, or to unnecessarily delay proceedings.
25

26 10. No party would be unduly prejudiced should this Court grant Plaintiff's motion
27 for leave to file a second amended complaint.
28

11. In fact, no other party has yet appeared in this matter. Dynia & Associates, LLC has not yet been served because no summons has yet been issued. While an entity, "The Schreiber Law Firm, LLC," was served with the original complaint, The Schreiber Law Firm, PLLC has not yet been served with the amended complaint or the proposed second amended complaint. While Plaintiffs' counsel has been in contact with an attorney at The Schreiber Law Firm, PLLC, he has ignored requests to accept a waiver of service under Rule 4(d). Therefore, Plaintiffs intend to serve The Schreiber Law Firm, PLLC formally under Rule 4 with a copy of the second amended complaint, in addition to serving Dynia & Associates, LLC, once the Court permits the filing and issues summonses.

12. Accordingly, Plaintiffs respectfully request that this Court grant their motion for leave to file a second amended complaint (Doc. 9).

Dated: March 14, 2014.

Respectfully submitted,

/s/ Jon N. Robbins

Jon N. Robbins WSBA#28991

Thompson Consumer Law Group, PLLC

Attorney for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on March 14, 2014, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system.

/s/ Christopher Bruner

Christopher Bruner